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Attorneys for Plaintiff
Terry T. Gerritsen

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

TERRY T. GERRITSEN, an individual,

Plaintiff,

v.

WARNER BROS. ENTERTAINMENT,
INC., A Delaware corporation; KATJA
MOTION PICTURE CORP., a California
Corporation; and NEW LINE
PRODUCTIONS, INC., a California
corporation,

Defendants.

Case No. CV14-3305-MMM (CWx)

[Hon. Margaret M. Morrow]

**ADDITIONAL REQUEST FOR
JUDICIAL NOTICE BY PLAINTIFF
TERRY T. GERRITSEN IN SUPPORT
OF OPPOSITION TO MOTION TO
DISMISS**

Date: September 29, 2014

Time: 10:00 a.m.

Room: 780

1 Plaintiff Terry T. Gerritsen (“Gerritsen”) submits this *conditional* request for
 2 judicial notice in opposition to the Motion to Dismiss filed by Defendants Warner Bros.
 3 Entertainment (“WB”), New Line Productions, Inc. (“New Line”), and Katja Motion
 4 Picture Corp. (“Katja”) (collectively, “Defendants”).

5 In support of their Motion to Dismiss, defendants submit a printout of a selected
 6 excerpt from the “Official Blog of Bestselling Author Tess Gerritsen,” dated October 7,
 7 2013. (Pearson Decl., Ex. D.) The document reflects Gerritsen’s statement as of October
 8 2013 that the Book was not made into a film. Defendants want this court to draw some
 9 conclusion from the one excerpt without (a) giving Gerritsen a chance to explain her
 10 comments, (b) considering other blog posts which discuss Gerritsen’s view of the Picture
 11 and the Book, and why she filed this lawsuit, or (c) considering the statements of many
 12 members of the public who were familiar with the Book and then saw the Picture and
 13 believed the Picture was based on the Book. Without context, this single printout
 14 potentially distorts the issues and facts. **Gerritsen therefore requests that if the Court**
 15 **does consider Exhibit D to the Pearson Declaration, that the Court also take judicial**
 16 **notice, pursuant to Rule 201 of the Federal Rules of Evidence, of other relevant**
 17 **excerpts of her weblog, attached hereto as Exhibits 46, 47, and 48. *See Meeker v.***
 18 ***Belridge Water Storage Dist.*, 1:05-CV-00603OWWSMS, 2005 WL 6246803 (E.D. Cal.**
 19 **May 3, 2005) (noting that if plaintiff had submitted additional documents to put judicially**
 20 **noticeable facts in context the court would have considered them.)**

21 Under Rule 201 of the Federal Rules of Evidence, when deciding a motion to
 22 dismiss, a court may take judicial notice of facts that are capable of accurate and ready
 23 determination by resort to sources whose accuracy cannot reasonably be questioned.
 24 *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322, 127 S.Ct. 2499 (2007)
 25 (noting that court’s ruling on 12(b)(6) motion to dismiss may take into consideration
 26 “matters of which a court may take judicial notice”). The excerpts from Gerritsen’s Blog
 27 have been published on her official website. Courts, including those in this district, have
 28 found web sites and their contents to be a proper subject for judicial notice. *See, e.g.*,

1 *Swisher v. Collins*, 2008 WL 687305, at *23 n. 29 (D.Idaho 2008) (“[f]or purposes of a
2 12(b)(6) motion to dismiss, a court may take judicial notice of information publicly
3 announced on a party's website, as long as the website's authenticity is not in dispute and
4 it is capable of accurate and ready determination”) (*quoting Doron Precision Systems,*
5 *Inc. v. FAAC, Inc.*, 423 F.Supp.2d 173, 179 n. 8 (S.D.N.Y.2006)); *Pollstar v. Gigmania,*
6 *Ltd.*, 170 F. Supp. 2d 974, 978 (E.D. Cal. 2000).

7 Based on the foregoing, Gerritsen respectfully requests that the Court take judicial
8 notice of the documents attached hereto as Exhibits 46 through 48.

9
10 DATED: September 8, 2014

KULIK GOTTESMAN & SIEGEL LLP

11
12 By /s/ Glen L. Kulik

Glen L. Kulik

Natalie N. Wright

Attorneys for Plaintiff

Terry T. Gerritsen

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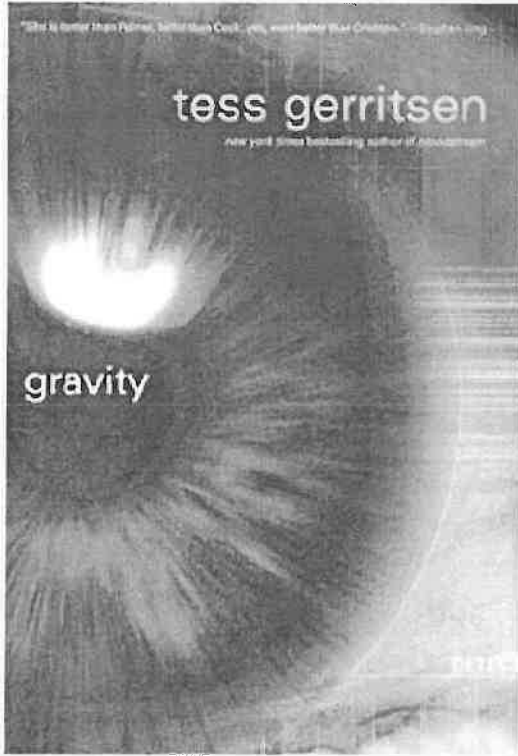
46

EXHIBIT 46

TESS GERRITSEN'S STATEMENT REGARDING: GRAVITY

Tuesday, Apr 29th, 2014 @ 11:14 pm

Many of you have expressed an interest in my position on the film *Gravity*, whose story bears a strong similarity to the story of my novel *Gravity*. For my response, please see the following press release, issued on April 30, 2014.



In 1999, the feature film rights to Tess Gerritsen's novel *Gravity* were sold outright to the motion picture company Katja Motion Picture Corporation and its parent company New Line Productions. While that project was still in development, Ms. Gerritsen wrote and submitted additional material, including scenes of satellite debris colliding with the International Space Station, the total destruction of ISS, and the surviving female astronaut left adrift in her space suit, alone and untethered. As far as Ms. Gerritsen knew, efforts to develop her novel into a film ended in

2002.

Years later, Ms. Gerritsen became aware of striking similarities between her novel and the then-upcoming film *Gravity*, to be directed by Alfonso Cuarón and produced, financed, and released by Warner Bros., which, since 2008, has owned and controlled New Line and Katja. Both Ms. Gerritsen's novel and the film are set in orbital space and feature a female medical doctor/astronaut who is stranded alone aboard a space station after a series of disasters kill the rest of the crew. Both detail the astronaut's struggle to survive. Both are called *Gravity*.

At the time, Ms. Gerritsen was unaware of any connection between those persons responsible for the film and those who had worked to develop her novel into a film. Ms. Gerritsen believed that as

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improbable as it appeared, it was at least within the realm of possibility that an independent storyteller could come up with the same specific setting, character, situation, and give it an identical title.

Then, in February 2014, Ms. Gerritsen received startling new information from a reliable source. She was told that at least one individual who was key to the development of the film *Gravity* had also been connected to her project while it was in development, and would have been familiar with her novel.

Ms. Gerritsen is now convinced the similarities are not merely coincidental. Therefore, she has decided to pursue legal action. She has engaged Glen Kulik, of the firm of Kulik Gottesman & Siegel LLP, to file a complaint against Warner Bros., New Line and Katja. Please see the complaint.

Writing *Gravity* was the most daunting challenge of my career. Even with my background in science, it took exhaustive research, visits to NASA facilities, and interviews with scientists, engineers, flight surgeons, project managers, spaceflight historians, and numerous NASA personnel before I felt knowledgeable enough to write even a single page of this highly technical story. It is the novel I am proudest of.

While I cannot make further comments on this matter, I want to thank my readers and fellow writers for their kindness and support. If this happened to me, it can happen to any writer.

All media inquiries should be directed to Elevate Communications: Mary Zanor, 617-548-1107 – mzanor@elevatecom.com

- COMPLAINT
- PRESS KIT

Comments Off

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EXHIBIT 47

MORE GRAVITY PARALLELS. WEIRD.

Thursday, Oct 7th, 2010 @ 04:15 pm

I ran across this description of Alfonso Cuarón's film, "Gravity," which I had noted earlier had eerie similarities to the plot of my novel, "Gravity." Here's how the film is summarized according to "Scriptshadow":

***'Everything that can go wrong does go wrong** as the movie becomes a series of near death experiences. Ryan must jump from point to point – whether it be to a vessel, a station, or an oxygen tank – and survive long enough to make the journey to the next point after that (and so on). Each destination is accompanied by dangerous debris, dropping oxygen, and the strong chance that whatever she's trying to get to might not be there. Think Apollo 13, but with the odds stacked 1 million times higher against you, if that's possible.*

Now here's the eerie similarity. For years, when I've been giving lectures about my research for my books Gravity, I've used almost that exact same phrase. I used it again in a blogpost I wrote a year ago for the Maine Science Teachers Association:


I started off by months of reading — every book I could get my hands on about astronaut training, the history of NASA, the shuttle program, and aerospace medicine. I found children's books surprisingly helpful — they often have great illustrations and they focus on just the oddball things I wanted to know, such as how do those toilets in space work? I was also able to pull tons of information off the NASA website. I downloaded blueprints of the space station (which hadn't even been launched yet.) And I downloaded close to 1,000 highly technical pages from their shuttle flight manual. (After 9/11, however, many of these pages were removed from their website.) I became familiar with how missions are supposed to work in space.

*But I didn't know how things might go wrong. And the theme of GRAVITY is "Titanic in space" — in this story, **everything that can go wrong does go wrong**. I needed to find out how to make those disasters happen. Clearly, it was time to visit NASA.*

Has Cuarón been following me around?

7 Comments »


7. RESPONSES TO "MORE GRAVITY PARALLELS. WEIRD."

1.  *cschmit1* says:
October 7, 2010 at 7:24 pm


Hi,

I know that the bizarre coincidences would make me feel slightly paranoid and quite frankly a bit concerned based on your previous post – though “Everything that can go wrong does go wrong” you highlight is just Murphy’s Law. Or approximately Murphy’s Law. I ultimately suspect and believe that the movie’s research is probably not on par with your work or perhaps they’re research involved reading your book?!? I guess it is difficult to separate the two unless there was like a written note explicitly stating that it had nothing to do with the novel. Good luck with this mystery.

Chris

2.  *Tess* says:
October 8, 2010 at 8:36 am


Chris, when they start using the description of “Titanic in space,” then I’ll really get paranoid.

3.  *Verity* says:
October 9, 2010 at 1:05 pm


I am half way through your GRAVITY right now. I enjoyed HARVEST and LIFE SUPPORT. I have never been a fan of science fiction but GRAVITY has caught my interest.

Speaking of LIFE SUPPORT, have you seen NEVER LET ME GO based on the book by Ishiguro? It reminded me of LIFE SUPPORT.


I am so glad the early books were put on Kindle.

4.  *Verity* says:
October 9, 2010 at 11:05 pm

I meant to compare NEVER LET ME GO to HARVEST, not LIFE SUPPORT.

5.  *Tess* says:
October 10, 2010 at 10:08 am

Verity,
some themes do seem to have universal resonance. And one of them is our exploitation of other human beings, which is what HARVEST and NEVER LET ME GO have in common.


6.  *Jenna* says:
October 12, 2010 at 10:49 am

Tess,

I am not so sure that they have been following you around. That conversation that you had said you had partaken in, in your last blog about this subject sounds like..you worked with someone who had some of your information, they knew something about your books..then in turn worked with this current director/producers etc, and passed along in conversation some of what you two had previously talked about. In turn the ideas planted in his mind from you, leaked out into the mind of someone else. Now you have this movie that not only is sounding more and more similar to your story, it very well could be based off of it. This to me really doesn't sound right. If they are going to make a movie, like your story, you should be given

some mention. It's a big mystery, that I hope gets worked out. Your books, would make some interesting movies, or like the new show Tv. Congrats on that btw. I hope you figure the mystery out, I know as a amatuer writer myself this would not only baffle me but drive me crazy. 😊

Jenna

7.  *Dustin* says:
October 13, 2010 at 1:40 am

Hey Tess,

Those are some interesting similarities. I do remember that Gravity (the novel 😊) was pretty intense – I listened to it as an audiobook about 4-5 years ago and will probably re-read it sometime. I might have to check out those Films/Books that have been mentioned and see if I pick up on the similarities in them too. Personally, I see your writing as Patricia Cornwell meets Robin Cook, not that I'm saying you're following them around of course 😊 because I also think your books are rather unique.

btw this Jenna who posted right before me is now Co-Moderator of the Tess Gerritsen Fans Group on Goodreads.com – hope you'll come visit us again when you have the chance. Just wondering – can we plan on a new release from you in 2011?

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EXHIBIT 48

GRAVITY AND THE TWO DEGREES OF SEPARATION

Monday, Sep 13th, 2010 @ 12:48 pm

I've been receiving a number of emails from readers, congratulating me on the new movie GRAVITY, which they believe is based on my book with the same title. The film is slated to go into production next year, to be directed by Alfonso Cuaron from a script written by his son. Here's a description of the Cuaron project:

“Gravity’ will highlight a female astronaut’s efforts to return home to Earth and her daughter as she is stranded on a space station after satellite debris slams into it and wipes out the rest of the crew.”

And here's the description of my book, *Gravity*, which was published in 1999:

From Publishers Weekly

Gerritsen (Bloodstream) meshes medical suspense and the world of space travel in another nail-biting tale of genetic misadventure. Much of this scary thriller is set aboard the International Space Station, where a team of six astronauts suddenly find themselves threatened by a virulent biohazard... As astronaut Emma Watson, the station's onboard doctor, struggles to fight the outbreak, her colleagues are dying one by one. ... (until) Watson is the only one left alive...

Two tales about a lone female astronaut trapped aboard a space station and struggling to get home. Both are titled GRAVITY.

But the movie has absolutely no connection to my book. At least, not that anyone's told me about. (Mr. Cuaron, feel free to email me!)

I have to admit, these coincidences do happen sometimes. And here are some other coincidences:

When the film rights to my book *GRAVITY* were sold (they're held by 20th Century Fox) the studio hired a fine screenwriter named Michael Goldenberg to adapt the book to film. Goldenberg was also the screenwriter who wrote “Harry Potter and the Order of the Phoenix.”

Alfonso Cuaron also has a Harry Potter connection. He directed “Harry Potter and the Prisoner of Azkaban.”

Finally, there's David Heyman, who's the producer of Cuaron's “Gravity.” He was also the producer of BOTH “Harry Potter and the Order of the Phoenix” and

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“Harry Potter and the Prisoner of Azkaban.” So he knows both Cuarón and Goldenberg.


It’s a small world out in Hollywood. I can’t help but wonder if the name “Gravity”, and “lone female astronaut trapped aboard space station” ever came up in conversation among the three of them!

15 Comments »

15 RESPONSES TO “GRAVITY AND THE TWO DEGREES OF SEPARATION”


1.  *sean* says:
September 13, 2010 at 1:21 pm

Does your main character name choice of “Emma Watson” create 1 degree of separation from the Harry Potter movies anyways? lol. It’s almost eerie.


2.  *Tess* says:
September 13, 2010 at 1:29 pm

Sean,

yeah, I almost forgot about that! I came up with the character name “Emma Watson” when I was writing the book in 1998. Way before the first Harry Potter movie was filmed!


3.  *cschmit1* says:
September 15, 2010 at 9:58 pm

wow, I recently bought Gravity and I’ve been reading about the movie of the same name and I never made the connection. It is a bizarre “coincidence.”


4.  *MarkYoung* says:
September 16, 2010 at 6:47 pm

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Interesting point, Tess. At one writer's conference, this subject came up about coincidences like this. One author believed two writers can come up with a very similar exact story concept, but yet the finish work will be unique to each writer, unless ... It's that "unless" that makes one wonder.

5.  Tess says:
September 17, 2010 at 8:58 pm


Mark, yes, it's that "unless" that remains the great unknown here. You want to believe that people wouldn't be so blatant as to copy, but sometimes you wonder.

6.  OlanHarrington says:
September 18, 2010 at 10:24 am


Was there anymore done about a movie adaptation?

7.  Tess says:
September 19, 2010 at 1:27 pm

Olan,
no, I'm afraid the project got stalled after the script was written. I'd always hoped that it would be made, but the studio seems to have dropped it.


8.  mdb says:
November 19, 2010 at 9:11 pm

Hi,
My name's Marek and I'm from Poland. I have just finished reading "Gravity" – the very first book of yours that I've ever stumbled on. And I must admit – it's not the last one :). I'm certainly going to read all of them. Which one do you recommend to read now? Thanks for response. Best regards 😊


9.  *Heather* says:
February 28, 2012 at 10:23 pm

Tess, I can't believe this! For a moment, I was completely giddy while watching the Oscars. I heard the description of Sandra Bullock and George Clooney's new film, Gravity, and instantly thought it MUST be your book!!!! How exciting!!! I have read all of your books and would love to see one on the big screen!

I just remembered to look up the movie and was disappointed (and confused) to see that it was not yours! Bummer! Google brought me to this blog post of yours from 2010. So, has Fox had anything to say about this? I guess they won't be making a movie based on YOUR book now? Bummer again!

10.  *Carl* says:
July 17, 2012 at 10:19 am


Hey Tess: So what's the latest? Will Gravity be a movie or not? What a CRAZY book! I LOVE it!

11.  *a9johnson* says:
September 18, 2013 at 9:36 pm

I just wanted to say when I saw the preview and title I was soooo excited because I thought it was a movie about your book. As I watched the preview I realized it was different. But I would like to say thank you for writing it Tess. It remains one of my favorite books to this day and the first book I read, that got me into reading. Good luck in your endeavors! -Adam

12.  *juliap* says:
November 22, 2013 at 8:17 am

Hi i am half way through book it is brilliant but i really thought it was the same as the film and pictured Sandra Bullock as Emma. Now i know it is not the same story line i dont know who to picture her as!

13.  *kenfromcanada* says:

February 6, 2014 at 11:22 pm

I sounds like your a bit pissed about what they did with your book...and you should be. I understood your book to be about the effects of random chance on human events.

The movie Gravity is what I call "New American Cinema". NAC is described by: 1. the story narrative is relatively unimportant compared to the symbolic narrative, and 2. the symbolic narrative must conform to Evangelical beliefs and attitudes.

Your book has people dealing with tragedy without making reference to God. The movie is an Evangelical smorgasbord. It is about the end of scientific secularism and how American can redeem herself by learning to pray. Sandra Bullock's character symbolizes America and how Americans will by necessity, move inevitably towards belief in God.


The movie starts off with her character suffering a major emotional trauma – the death of a child: the implication is that scientific secularism cannot deal with the traumas of life; this is why people turn to religion. Plus she is sent into space with only six months training – thus, science has left her completely unprepared. All hell brakes loose when the Russians blow up a satellite and unintended consequences occur. Eventually, she is in a capsule and, fearing death says "No one ever taught me to pray". Finally, as scientific secularism literally crashes and burns around her, she crawls onto the beach and, after learning to stand on her own two feet is able to to say "Thank you" to God. The entire story then, is a message to Evangelicals confirming their beliefs that scientific secularism is ending and they are in the right.

Afternote:


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I think the Evangelicals are having a bit of nasty fun with you. You write in your book “During his last campaign, he’d demanded that public schools teach Creationism. Throw out the biology books and open the Bible instead.” Clearly you have a low opinion of religion. I can imagine them sitting at home giggling about how they took the movie rights from a scientific secularist and turned them into an Evangelical movie. I suspect this is true because at the end, America crawls out of the ocean onto the beach, then stands. This is a spoof of the classic evolution picture showing the fish coming onto land then turning into a walking man. Other example of NAC are Twilight (Edward=the Mormon Church, Jacob=the USA government, Bella=secular America). An example of New American Literature would be The Hunger Games (I haven’t seen the movies). The books subscribe to the Evangelical belief that women are emotional and men are logical – Katniss is told she was not allowed to participate in the planning of the escape because she was too emotional.

So you have the right to be upset. Motivated by the Seven Mountains Movement, Evangelicals are in the process of taking over America. What I call “the Age of Women” is coming to an end.

14.  *kenfromcanada* says:
February 6, 2014 at 11:26 pm

Sorry, edited for typing errors:
It sounds like you’re...

15.  *Frank Ely* says:
July 28, 2014 at 9:00 pm

Regardless of the coincidence in your book and the movie I Will not be seeing the movie or rent it because you never know.